



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 29, 2010

Mr. Jeffery W. Blackmon
DOC # 935563
4490 W. Reformatory Rd.
Pendleton, IN 46064-9001

Re: *Formal Complaint 10-FC-230; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Blackmon:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The DOC's response is enclosed for your reference.

BACKGROUND

According to your complaint, you hand-delivered a "request for interview" to Pendleton Correctional Facility ("Facility") Counselor Michael Kidder. In that request, you asked to review DOC health care service directives. Mr. Kidder advised you that you would need to pay ten cents (\$0.10) per page. On August 30th, you wrote to Legal Liason David Barr and sought access to either the records themselves or a written denial. On September 2, 2010, Mr. Barr responded in writing to inform you that your request must be on the correct form, which was available in the Facility's library. You object to the form because it is "not a state form," because it contains inaccurate information regarding the Facility's current address, because it does not permit inspection of a public record but requires the payment of copy fees for any record, and because it gives the Facility seven days to respond to a hand-delivered request. You also allege that the Facility requires inmates to request records by using the form, but does not require the media or members of the public to do so.

My office forwarded a copy of your complaints to the DOC. Legal Services Director Robert Bugher responded on behalf of the DOC. Mr. Bugher also enclosed a letter dated September 28, 2010, from Mr. Barr to you in which Mr. Barr responded to many of the above allegations. Specifically, Mr. Barr notes that although the request form is not a "state form," it was created pursuant to the APRA and previous public

access counselor opinions have not deemed it illegal. He acknowledges the incorrect Facility address on the form, but argues that such error is harmless and does not inhibit a requester's ability to obtain or inspect records by using the form. With respect to your allegations regarding the response time and fees listed on the form, Mr. Barr asserts that no such form can contemplate all of the APRA issues that might arise as a result of a request, but that records maintained in the Facility's library are available for inspection at no cost. He adds that you may check out the records you requested from the library for one week at no cost, and that any fees charged to inmates for requests are strictly for copies rather than inspections. With regard to the fact that Counselor Kidder informed you that there would be a copy fee associated with your request, Mr. Barr states that Counselor Kidder is not the appropriate person from whom to request public records as he is not familiar with the appropriate procedures. If you had originally submitted your request on the appropriate form, you would have received a timely and appropriate response.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The DOC is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the DOC's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

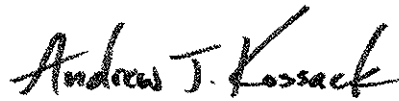
In my opinion, the DOC's actions here do not indicate a denial of access. Under the APRA, an agency may require that public access requests are submitted in a particular form: "A request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency." I.C. § 5-14-3-3(a). The APRA does not explicitly outline what an agency may or may not include on a public records request form, but it is clear that "[n]o request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute." *Id.* The APRA further provides that a public agency "may not deny or interfere with the exercise of the right [to inspect and copy public records] stated in subsection (a)." I.C. § 5-14-3-3(b). There is no requirement in the APRA that the form be a "state form." Although the DOC's form mentions copy fees for providing copies of records, there is no evidence that the form denied or interfered with your APRA rights. DOC notes that you did not submit your request on the appropriate form or through the usual channels for submitting requests to the Facility and DOC. Once Mr. Barr received your request, he sent you a detailed response and informed you about how to obtain the records you sought at no charge. Mr. Barr's September 28th response to you complied with the APRA procedurally by responding in a timely manner and substantively by

granting your request and informing you of how to procure the records you sought. Consequently, the DOC did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the DOC did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: Robert D. Bugher



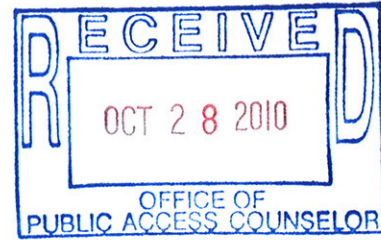
STATE OF INDIANA
Department of Correction

Indiana Government Center – South

Mitchell E. Daniels, Jr.
Governor

302 W. Washington Street • Indianapolis, Indiana 46204-2738
Phone: (317) 232-5711 • Fax: (317) 232-6798 • Website: www.in.gov/idoc/

Edwin G. Buss
Commissioner



October 28, 2010

Ms. Katie M. Williams
Office of the Public Access Counselor
W460, Indiana Government Center South
402 West Washington Street
Indianapolis, Indiana 46204

RE: Request for Records
Formal Compliant 10-FC-230

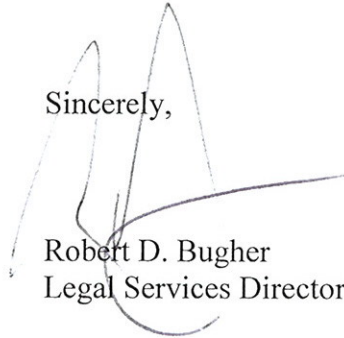
Dear Ms. Williams:

This letter is in response to your request for additional information regarding the above-referenced formal complaint.

On September 28, 2010, Mr. David Barr, Administrative Assistance at the Pendleton Correctional Facility, provided a response to Mr. Blackmon. A copy of that response is attached hereto. The response addresses the issues raised by Mr. Blackmon.

If you have any further questions or concerns, feel free to contact me directly. Thank you for your assistance.

Sincerely,


Robert D. Bugher
Legal Services Director

Enc.

Pendleton Correctional Facility

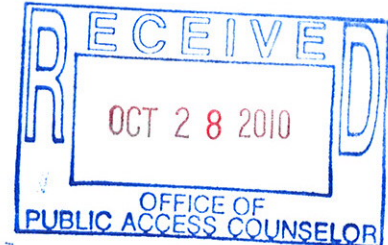
Administrative Services

Neil Potter – Admin. Ass't. Supv.

David W. Barr – Admin. Ass't.

Kris Eckrote - Secretary

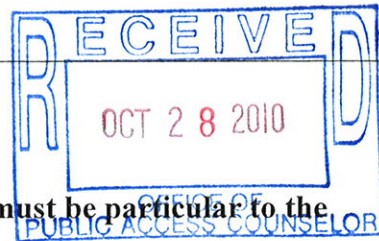
TO: Jeffrey Blackmon #935563
FROM: David W. Barr – Administrative Assistant
RE: Response to letter dated 9-19-10
DATE: September 28, 2010



Your letter to Mr. Potter dated 9-19-10 was forwarded to me for a response. I will respond to your letter according to each issue you raise.

1. You state the form the facility required you to fill out appears not to be a state form. **The form was adapted by the facility in accordance with IC 5-14-3-3(a). This form has been questioned in complaints to the Public Access Counselor and the response from that Office has supported the facility (ref. 09-FC-58).**
2. You make reference to inaccurate information on the form, referencing the incorrect address. **You have been at this facility long enough to know the address changed several months ago. The address you refer to is the old address of this facility and in no way hinders anyone from making a records request using that form. The updated form has been provided to the Law Library with the correct address on it. I would surmise that the old forms are still in the Library as well.**
3. You ask a question, does the facility require the media and general public to use the same form offenders are required to use. **The Facilities stance is that all request pursuant to the Public Access Law needs to be on the proper form. One form is used for all.**
4. You indicate the form is for a copy of Public Records or a request to copy and that a fee will be charged. You also make reference to the seven days to respond. ***Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:***
 - (1) identify with reasonable particularity the record being requested; and***
 - (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.***

Above is cited from IC 5-14-3-3(a) and directly indicates an agency has the right to ask that a request for inspection of Public Records be on a form



provided by the agency. It also states the request must be particular to the record being requested.

An agency has 7 days to respond to a written request. The Public Access Law does not indicate an agency has to provide records within 7 days, just respond to the request. The fee for copies is set by IC 5-14-3-8.

5. You state that Offenders are required to use the form indicating copies be made and they would be required to pay \$.10 per page. The form developed cannot address all aspects of the Public Access Law. The form was developed based on the fact that most requests are for copies. This does not mean that in the area left for people to state their request, they cannot request to inspect records. This facility has never required any offender to pay for copies of documents that can be accessed from the Law Library for inspection. Only those requesting copies are charged. I have talked to Mr. Fowler in the Law Library and was informed all requests for inspection of policy is handled the same. You have to sign for a copy and then you have one week to inspect. Should you not return it after 1 week, you will be charged at \$.10 per page. The form is clear that the fee is for copies, not inspections.
6. You state the facility is violating the law by not responding to a verbal request within 24 hours and the form indicates the agency has 7 days to respond. You also cite IC 5-14-3-9. Again, I would inform you that the overwhelming majority of requests are in writing, which the form was designed based on the majority of requests. I would also refer you to item number 4 above which IC 5-14-3-3(a)(2) indicates a request for inspection must be at the discretion of the agency, in writing on or in a form provided by the agency. In the section of the Public Access Law you cite, sentence (a1) states "*(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made;*)", This office has been designated by this facility as the office to handle request for public records. At no time did you ever make a verbal request to this office to inspect public records. You did send a request on an interview slip and the response was to put your request on the proper form which could be obtained through the Law Library. You did not do that.
7. You state you made a verbal request to Counselor Kidder and was told you need to pay \$.10 per page to inspect. You also make reference of writing to me before writing to Mr. Potter. Counselor Kidder is not versed on the Public Access Law and therefore does not know the procedure. You having worked in the Law Library should understand the procedure of being allowed to inspect policies. Let it also be noted that you did write to me, and my response was to put your request on the proper form and send it back to me and I would look at your request. You did not do that, but continue to try to circumvent the procedure for obtaining your request.
8. You make reference to asking to review Health Care Directives during the term Ms. Cotton was the Superintendent at this facility. Our records show this is correct. On a memo dated September 14, 2004, the directives were sent by this office to Counselor J. Jones with instructions to allow you to inspect the

directives and charge you \$.10 per page for any copies you wanted to keep. As a result of your request in 2004 to inspect copies of the Health Care Directives, a decision was made by the facility to place a copy of these directives in the Law Library, thus making them more accessible to offenders.

In summary of your letter, a lot has changed since you made a similar request 6 years ago. You were fed wrong information due to lack of knowledge by a staff member on the Public Access Law. You did not follow directions given to you by this office on how to go about getting the correct form to make a request. The form the facility requires requests be made on is allowed by Indiana Code and has been supported by the Public Access Counselor. Had you made the formal request on the proper form to this office, it would have been processed and sent to the Law Library asking them to provide you copies of the Directives you wished to review. I will also point out that what you did send, did not specifically say you wanted to review all Health Care Directives or specific directives. There are numerous directives within the policy. Your request in 2004, was for specific directives and were provided to you.

Once again I will inform you to submit your request on the proper form required by the facility and submit it to this office. Be specific as to which Health Care Directives you want to review and it will be processed in accordance with the Public Access Law.

dwb

Cc: Facility File #935563
File

